Russia, Fredrik Bajer of Denmark, Frederic Passy of France, etc.

In the evening a great public meeting was held in the Löwengarten, which was attended by nearly two thousand people. The Baroness von Suttner was one of the chief speakers, and made one of the strongest and most eloquent speeches she had ever been heard to deliver. There were also addresses by Emile Arnaud from France, J. Novicow from Russia and Miss Ellen Robinson from Liverpool, England.

Just at the close of this meeting came a warm response from President Roosevelt to the message which had been sent him. With the enthusiasm which this awakened, the Congress closed — a Congress which, with whatever defects it may have had, will probably prove to be one of the most influential ever held.

Address of Hon. Richard Bartholdt at the Brussels Interparliamentary Conference.

In Support of the Draft of a General Arbitration Treaty Presented by Him.

Mr. President and Gentlemen of the Conference: It is advisable of course that a treaty of arbitration be evolved which is fit to become a model, and which at the same time can hope to meet with the approval of every nation. Is such a thing possible at the present time or in the near future? It is not now possible to secure universal assent to a treaty of arbitration such as Holland and Denmark have concluded, though that is surely the ideal toward which the world is moving and at which it will in due time arrive. And it is safe to say that the United States is ready now to enter into such a treaty with every nation, provided all nations will agree to enter into an international legislature where the law can be made which international courts are to administer. Having a voice in such a legislature and with the leading minds of the world available as international judges, the United States would not hesitate to go the full length of agreeing to arbitrate all questions; for it will have faith in making right and reason prevail in the international congress and before the international courts.

If Europe doubts this, let the United States be put to the test by coupling these two propositions and presenting them for her acceptance. This, however, is impossible, for the nations are not prepared to make any such proposition. And some may ask, How can this be true of the United States when such a limited treaty as the Anglo-French agreement could not find sanction in that country? The answer is that the defects of this agreement killed it in America; and, indeed, the defeat of these treaties was a blessing in disguise, for it fixed the thought of the world on these defects only to make it plain how they can be removed.

The draft of a treaty which is presented herewith is submitted as a basis for discussion in evolving a treaty fit to become a model as the result of the world's experience in international arbitration distilled in the light of the most recent events. The work of the pioneers (such as Burritt and others) has been consulted. The actual history of arbitration has been digested. Treaties of arbitration which have been concluded have been read, compared and classified. The work of conferences on this subject has been carefully considered, particularly the work of certain conferences in the United States itself, the great Pan-American Conference of Washington in 1890 and the Hague Conferences. So that in its preparation individual, national and international effort heretofore made in this cause has been fully and freely utilized. And the draft as presented contains the best thought put forward from any of these directions and which seems reliable under existing conditions.

The Treaty of The Hague is the basis upon which it reposes, and to strengthen and magnify the Hague Tribunal is its object. The clause defining the subjects to be submitted is taken from the resolution of the great Pan-American Congress organized and presided over by James G. Blaine, which contained representatives from every American nation, and will be found acceptable to those nations — a thing of no small moment in view of the fact that the plan is to secure the assent of all nations to this treaty. These subjects are enumerated in Article I. (see above).

Without going into all the details, many of which speak for themselves, it will suffice to state as a general proposition that this treaty attempts to use all the good in all the treaties, and to correct such defects as are apparent in them without going beyond what is now realizable. In order to indicate how this result is reached, I may take the Anglo-French Treaty, the Argentine Treaties and the Hague Treaty as typical.

1. *The Anglo-French Treaty.* A treaty on the line of this agreement cannot pass the United States Senate, because it does not define clearly enough what is included in it. That question, which is the vital one, is left for a subsequent special agreement between the parties. Now this subsequent agreement is to be entered into between the Executive Departments of the contracting powers, and by ratifying such a treaty the Senate would really renounce its right to pass judgment on what kind of questions are to be arbitrated. If, however, the kind of questions to be arbitrated are specified, as they are in the proposed model treaty, the Senate will exercise its judgment when the treaty is ratified, and will readily leave mere administrative acts to the State Department and the Executive. The arbitration movement needs the United States for its full success. The United States needs European acceptance of this classification of questions that are arbitrable, in order that it may enter into general treaties of arbitration instead of going on in the old way of submitting individual cases to arbitration whenever this is found possible. When the clause in the proposed treaty is examined, it is found that arbitration is made obligatory only in such cases as all well-meaning governments may be personally expected to settle in this manner.

2. *The Argentine Treaties.* Under these treaties it is agreed to refer all questions to arbitration except such as effect the constitution of the contracting powers. This leaves the signatory power under the necessity of defending by force the fundamental right to constitute itself as it pleases, even after general assent to a treaty.

The treaty herewith suggested is based on the acknowledgment that all nations have the right to organize themselves as they choose and to be supreme in their own domain. The arbitration courts would be found to

respect these rights by the very terms of the treaty giving them jurisdiction. In addition to this it is provided that an appeal to arms may be taken from a decision affecting these or any other rights not enumerated in Article 1. This really guarantees to all nations all their vital interests, leaves them free to defend them even against judicial invasion, and removes all reason for reserving from arbitration the questions affecting vital interests or national honor.

3. *The Treaty of The Hague.* In attempting to strengthen and magnify the Hague Tribunal it is necessary of course to correct any defects and supply any omissions in the treaty on which it is founded. The method provided by the Treaty of The Hague for selecting judges to try any particular case is defective in this, that even after the naming of two judges each by the two disputant nations no sure way of selecting the fifth is provided. Here it is provided that a member of the highest court of a nation not interested in the dispute be chosen by lot, if the Court cannot be constituted fully by the method provided in the Treaty of The Hague. And who is worthier to judge between nations than the men to whom the several nations have entrusted judgment in their most vital national interests?

The Hague Court has no jurisdiction whatever. It can act only in cases voluntarily submitted to it, and it has not the proper power to develop a system of procedure. This treaty corrects both these defects, giving the court jurisdiction over those questions in which arbitration is made obligatory, and authorizing it to develop a suitable system of procedure. So that by this treaty the Hague Court will not only be founded upon the work of jurisdiction, but will become an integral self-acting part of the world's judicial machinery.

In the next place, the Treaty of The Hague can be terminated on one year's notice. Provision is here made for prolonging its life after notice of denunciation. Three years is suggested, for this reason: It takes that long to build a warship. And this provision will tend toward decrease in naval construction after the treaty is generally adopted, because new ships can be ordered on notice of denunciation and be in service by the time the treaty expires.

Furthermore, there would be a political party in every action opposed to denunciation, and the increased war preparation would give them good ground to stand on, and in three years they might carry the country against denouncing the treaty before the notice became effective. These are the main things that would be accomplished by this treaty: the Hague Tribunal would be strengthened and magnified, being given a proper place among judicial institutions and thus enabled more easily and surely to grow in power and favor. International courts inferior to the Hague Tribunal would be constituted which would serve as anterooms, not as rivals, to that Court, keeping out such questions as ought to be decided by inferior tribunals and inducing the nations to use the Hague Court in questions proper for it.

The plan for these Courts of First Instance removes some serious objections to arbitration which have already made themselves felt. Among them is the fear of decisions by judges who have no knowledge of national or local conditions. The judges comprising these Courts of First Instance, being chosen from the highest courts of the disputant nations, would understand local conditions, and errors from prejudice or partiality on their own part would be corrected on appeal to the High Court at The Hague.

The treaty is submitted as an aspiration toward the highest and, at the same time, as a suitable concession to existing conditions, in order that it may hope for immediate and universal acceptance. This is hoped for from the provision allowing each nation to endorse the procedure part of the treaty, thus putting it into effect, and at the same time to endorse the essential part only to the extent that it is willing to go, thus making the treaty narrow in scope for backward nations, broad in scope for advanced nations, but operative to some extent among all nations now, and destined to come into fuller operation among all as fast as any nation rises to the height of honor involved in abandoning war and accepting arbitration on a just basis in its stead.

The American people would prefer to sweep away all these distinctions and differences and create now all the governmental machinery necessary to administer justice among nations as it is administered among the United States. They must content themselves, however, with making painful and slow steps forward, but they are resolved to go forward until the best is attained, however long the way or great the effort required.

Draft of a General Treaty of Arbitration.

BY HON. RICHARD BARTHOLDT.

President of the Arbitration Group in Congress. Submitted to the XIIIth Interparliamentary Conference.

With a view to substituting judicial decisions according to recognized principles of law for war between nations, the signatory powers have entered into the following general treaty of arbitration, which is based upon the recognized right of every nation to organize itself in such a manner as it may choose and to be supreme in its own domain, without, of course, freeing it from responsibility for its acts contrary to recognized principles of international law. (See Sir Henry Maine on International Law, p. 60. Hannis Taylor on International Law.)

ARTICLE I. All differences which grow out of the interpretation or enforcement of treaties, which concern diplomatic or consular privileges, boundaries, rights of navigation, indemnities, pecuniary claims, violations of the right of personal property, violations of recognized principles of international law, shall be tried by the international courts, established under this treaty and the Treaty of The Hague, Section 30 *et seq.*

ARTICLE II. All other questions of whatever character shall be referred to a Commission of Inquiry, constituted according to the provisions of the Treaty of The Hague (Title III., Article 9-14), or to a court constituted as provided herein, and decided on appeal by a Court of the Permanent Tribunal at The Hague, before resort to arms. Alleged violations of this clause shall be tried by the international courts as provided for questions included in Article I.

ARTICLE III. Upon filing of a statement of its contention in a case of the kind included under Article II., either power may serve notice that it will be proper for its treaty-making power to accept or reject the decision,